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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

In re the Marriage of MICHAEL AND
NONGKRAN EDWARDS.

MICHAEL EDWARDS,

Respondent,

v.

NONGKRAN EDWARDS,

Appellant.

E062161

(Super.Ct.No. SWD1200314)

OPINION

APPEAL from the Superior Court of Riverside County. Robert W. Nagby,

Temporary Judge. (Pursuant to Cal. Const., art VI, § 21.) Affirmed.

David K. Palmer and Terran T. Steinhart for Appellant.

No appearance by Respondent.

Appellant Nongkran Edwards appeals from the final judgment on the marriage dissolution petition filed by respondent Michael Edwards.¹ The main issues at trial were the characterization of the couple's interest in a residence in Temecula that Michael purchased before the marriage; whether Michael was entitled to reimbursement from Nongkran; and whether Michael was in possession of any of Nongkran's separate property. After a three-day trial that spanned over a year, the court ruled that the Temecula residence was Michael's separate property; that Michael was not entitled to reimbursement; and that there was insufficient evidence that Michael retained possession of Nongkran's separate property.

Nongkran's appeal can be summarized in four arguments. First, she argues the court abused its discretion by refusing to grant her oral request for a continuance on the morning of the last day of trial and thereby requiring her to proceed in propria persona. Second, she contends insufficient evidence supports the finding that Michael had not retained any of her separate property. Third, she contends the court abused its discretion by refusing to increase the amount of temporary spousal support. Fourth, Nongkran asserts she is entitled to a new trial on the value of the community share of the Temecula residence.² For the reasons discussed below, we affirm the judgment.

¹ For ease of reference, we use the parties' first names.

² Michael did not file a respondent's brief.

I

FACTUAL AND PROCEDURAL BACKGROUND

A. *The Petition and Response*

This case concerns the 10-month marriage of Michael and Nongkran. Michael is a Sergeant Major in the United States Marine Corps and was deployed for seven of those months, from November 13, 2011 to June 21, 2012.

On February 6, 2012, Michael filed the dissolution petition. The petition requested that the savings he accumulated prior to marriage remain his separate property and that the residence in Temecula be deemed his separate property “to the extent that such mortgage payments and down payments were made prior to marriage.” In her response, Nongkran listed an iPad as her separate property and asked for exclusive use of the Temecula residence until trial. Michael reported gross earnings of \$8,344 a month and a monthly mortgage payment of \$2,342. Nongkran reported receiving \$750 a month in interim support from Michael. Both parties reserved the right to amend their filings once they had sufficient opportunity to identify their separate property.

B. *Continuances Leading up to Trial*

Both parties sought restraining orders against the other party. At an August 7, 2012, hearing regarding Michael’s request for a permanent restraining order, Nongkran’s attorney requested a continuance on the ground that he had recently been retained and

needed additional preparation time. The court granted the continuance. The court also issued an order requiring Michael to return to Nongkran all of her separate property.

At the continued hearing on August 27, 2012, Nongkran requested another continuance, as well as permission to relieve her current counsel, Mark Ellis, and retain substitute counsel. Michael's counsel opposed the request based on lack of notice and the inconvenience it would cause the four witnesses who had traveled to be present in court that day, three of whom had been present at the August 7 hearing. The court granted the continuance so that Nongkran's new counsel could prepare for the proceedings. The court acknowledged and apologized for the inconvenience to the witnesses.

At the continued hearing on October 12, 2012, Nongkran's new counsel, Michael Bender, filed a substitution of attorney to replace Nongkran's previous counsel, Robert Karwin (who became Nongkran's counsel after Mr. Ellis). Mr. Bender argued that a continuance was necessary because he had only recently received the case file and because Nongkran was in the hospital and could not be present at the hearing. The court accepted the substitution of attorney and granted the continuance. In doing so, it expressed "concerns . . . with regard to the progress of the case and the necessity to—to accommodate our witnesses." The court stated: "I'm assuming [the witnesses are] Marines that are stationed probably down in San Diego somewhere who've come great

distance to be here not only today, but they've been here previously, and they were ordered back, and so I have to recognize their time as well."

The court also stated: "I wanted to make a record with regard to the matter that we're going through this succession of attorneys. . . . [A]nd this is in a relatively short time. . . . [¶] [A]s to the first counsel to continue the matter, that's not a big thing, because people do need an opportunity to get an attorney they feel comfortable with, but she's had these opportunities now." The court continued the hearing to December 17, 2012.

At the outset of the December 17 hearing, Mr. Bender requested to be relieved as Nongkran's counsel. Nongkran added that her attorney was "not prepared for the case today." The court informed Nongkran that if she was asking for her attorney to be relieved, then she would have to proceed in propria persona. The court explained: "We already continued this matter for another counsel to be relieved and that counsel wasn't prepared. Then there was another counsel, and that counsel was substituted out. This is the third attorney. . . . [¶] Keeping in mind that the court needs to weigh and balance the issues as they pertain to the other side as well. . . . The matter was set for August 7th, 2012. We were here again on August 27th, 2012, October 12th, 2012, with the matters being continued. November 15th, 2012, December 5th, 2012, and now we're at December 17th. This matter needs to be concluded."

The court held an in-chambers conference with counsel, after which the parties announced they had been able to reach a stipulation on various issues. At that time, Michael had been paying for a storage unit to house Nongkran's separate property until she was able to retrieve it. As relevant here, the parties agreed that: (1) both parties would withdraw their requests for restraining orders; (2) Michael's obligation to provide spousal support to Nongkran would terminate on December 31, 2012; (3) Michael would have temporary exclusive control of the Temecula residence until trial; (4) Michael would continue to pay for the storage unit containing Nongkran's personal items until January 31, 2013. The court set a mandatory settlement conference for April 8, 2013.

In a schedule of assets and debts signed on January 31, 2013, Nongkran listed as her separate property a necklace valued at \$200 and a 1996 Honda valued at \$2,000.³ She attached to the schedule a 12-page list of "household furniture, furnishings, and appliances" that she characterized as her separate property. Nongkran assigned values to most of the items on this list, but she did not include a total value.

At the April 8, 2013, mandatory settlement conference, Nongkran requested another continuance. The court denied the request and set trial for May 9, 2013.

³ On August 21, 2015, we granted Nongkran's request to augment the record with this document.

C. *Trial Days 1 and 2*

When trial commenced on May 9, 2013, Nongkran was represented by her fifth attorney of record in the matter, Catherine Schwartz.⁴ The court heard testimony from Michael regarding the grounds for dissolution and entered judgment terminating the marriage for irreconcilable differences. The court identified the remaining trial issues as the classification and disposition of the Temecula residence, and mutual claims of reimbursement for separate property.

Trial resumed on October 17, 2013. On direct examination, Michael testified that he and Nongkran were married on September 7, 2011. Before his deployment in November 2011, he executed a power of attorney in favor of Nongkran. It is protocol for Marines to execute a power of attorney in favor of their spouses before deployment.

In early 2012, while Michael was deployed, Nongkran asked him for a divorce. Michael testified that, after they separated, Nongkran withdrew \$20,000 from his Navy Federal Credit Union bank account, which contained the savings he had accumulated before the marriage. On the day Michael filed for divorce, February 6, 2012, Nongkran executed a grant deed using her power of attorney, changing title of the Temecula residence from Michael's sole and separate property to both parties as joint tenants.

⁴ After relieving Mr. Bender, Nongkran hired Edgar Diaz as her attorney. Ms. Schwartz replaced Mr. Diaz.

According to Michael, Nongkran also kept half of the proceeds of the sale of his 2003 Mustang Cobra, a car he had purchased in 2008.

Regarding Nongkran's separate property, Michael testified he had returned all of her personal items and had not retained any. On the day the deputy executed the order directing Nongkran to move out of the Temecula residence, Nongkran spent about two and a half hours gathering various items of her personal property to take with her. About a month later, Michael gave the deputy Nongkran's jewelry box and clothing that remained at the Temecula house. Two weeks after that, Michael brought "boots, clothes, make-up, hair products, colognes, all those different items" to his attorney's office to be transferred to Nongkran. At some point, Nongkran's adult sons came to the Temecula house and retrieved their personal property.

In the beginning of December 2012, Michael rented a storage unit for the remainder of Nongkran's personal property. He took photographs of all of the items he put into storage, namely: "Personal items for her son, Michael; for her; pictures, computer hardware, movies, DVDs, electronics, clothing, [her] safe, papers, her personal papers from a previous court accounts [*sic*], her jewelry boxes, all of her wicker baskets; her laundry baskets, make-up, cologne, perfume, boots, purses, coat hangers." Nongkran retrieved the items from the unit about a month later.

In April 2013, after Michael had moved to Pennsylvania for a job assignment, Nongkran sent him a 14-page inventory of items she claimed he failed to place in the storage unit.

Michael's counsel introduced a copy of Nongkran's inventory on which Michael had made handwritten notations regarding the characterization of the property.⁵ Michael testified that the only items on the inventory he had kept and sent to Pennsylvania were the "dishes, bedroom sets, pots and pans" that Nongkran had brought into the house before they were married, to replace his property.⁶ He estimated the total value of this property to be approximately \$3,000. Michael would later testify, during Nongkran's cross-examination, that when Nongkran moved into his house (before they were married) she replaced much of his furnishings with her own and told him that furniture was "now ours."

In terms of spousal support, Michael testified he paid Nongkran \$1,500 for July 2012 and \$750 each month thereafter until December 31, 2012. During Michael's cross-examination, Nongkran's counsel informed the court that Nongkran's 14-page inventory

⁵ We grant Nongkran's motion to augment the record with this inventory. However, we note the inventory Nongkran provided does not include Michael's handwritten notations and thus is not the exact document that was admitted as petitioner's exhibit No. 11 at trial. This discrepancy does not affect our conclusion in this appeal.

⁶ Michael and Nongkran met in August 2010; Nongkran moved into Michael's house in February 2011, and they married in September 2011.

did not include estimated values for the items of her separate property. The court ordered the parties to meet and confer regarding the value of the items, stating, “You still have to be able to prove there is appropriation of any particular item. [¶] The answer to [whether] any particular item [was appropriated] is, no, unless it can be proved.”

After cross-examining Michael, Nongkran’s counsel called two witnesses who testified about issues that are not relevant to this appeal.

The following day (October 18, 2013), the court held an in-chambers conference with counsel on the subject of personal property. The court found good cause to continue trial to April 11, 2014, and ordered each party to prepare an inventory of all of the property in the party’s possession.

D. *Trial Day 3*

In January 2014, Nongkran removed Ms. Schwartz as her attorney and retained new counsel, Don Starks. On April 8, 2014, Mr. Starks filed a motion to be relieved as Nongkran’s counsel. On May 7, 2014, Nongkran filed a substitution of attorney, removing Mr. Starks as counsel and substituting herself as attorney in propria persona.

On April 11, 2014, the court continued the third day of trial to June 20, 2014, due to its own unavailability. The morning of the third day of trial, Nongkran asked for a continuance on the ground that her current attorney, Mark Rivas, could not be present because he was in trial on another matter. David Lander, who was making a special appearance on behalf of Mr. Rivas, brought the substitution with him to court but had not

yet filed it. The court stated: “The substitution of attorney will be allowed if the attorney is ready to go. Otherwise, the Court will not incur any more delay. It is the day of trial. No request for continuance has been filed, and no substitution of attorney is filed at this point.” Mr. Lander explained that he was simply hired to make a special appearance to request a continuance and that he could not represent Nongkran at trial.

The court asked Nongkran why she had not filed a request for continuance and a substitution of attorney sooner. Nongkran responded that her adult son had been in a serious motorcycle accident in March 2014. As a result of the accident, she had been consumed with caring for him and had not been getting enough sleep. When her previous attorney, Don Starks, withdrew his representation, she had trouble finding another attorney to take her case while also caring for her son. Ultimately, Mario Rivas agreed to represent her.

Nongkran hired Mr. Rivas and signed the substitution form four days before trial. The day before trial, she received a phone call from Mr. Rivas’s secretary informing her he could not appear in court because he was in a criminal trial.

Michael’s counsel opposed Nongkran’s oral request for lack of adequate notice. Counsel argued Nongkran could have requested a continuance sooner, such as when Mr. Rivas had agreed to represent her.

Noting the amount of delay that had already occurred in the case, the court refused to grant another continuance. Nongkran asked the court for time to retrieve her case file

so that she could represent herself. The court asked her how much time she needed and she responded that the file was in San Diego. The court denied her request, but allowed her to retrieve case documents from her car.

At the start of her case, Nongkran recalled Michael as a witness. Despite lengthy cross-examination on the subject, Michael maintained that he was not holding on to any of Nongkran's separate property. Nongkran asked Michael about the furnishings she had brought into his home.⁷ Michael responded that she had brought the furnishings into the home when she moved in with him, before they were married. He testified that she had told him that the furniture she brought into the home "was now ours."

Before lunch recess, the court asked Nongkran how much longer she planned to examine Michael. She estimated she had about 30 minutes more and told the court that she planned to testify and to present photographs of her separate property. The court informed the parties that it would make its findings at 4:20 that afternoon.

When trial resumed at 1:30 p.m., Nongkran told the court she was on medication that made it "difficult for [her] to think." The court responded: "The Court will note you are extremely articulate and have conducted yourself about 90 percent better than about 90 percent of the attorneys that come through this court." Nongkran replied that she

⁷ During her examination of Michael, Nongkran claimed that the value of the furniture she had brought into Michael's home before the marriage was \$247,000.

hoped she was not frustrating the court by repeating herself because she was “usually sharper than this.”

Soon after resuming her examination of Michael, Nongkran became frustrated with his responses and told the court he was not testifying truthfully. The court responded, “As indicated, Ma’am, I will give you ample opportunity to testify to anything that disputes [Michael’s testimony].” Nongkran proceeded to examine Michael for over two more hours.

At several points during the examination, the court warned Nongkran it would be closing evidence at 4:00 p.m. At one point, the court told Nongkran, “I just want to remind you, I told you the evidence is going to stop at 4:00. . . . How you use your time is up to you. So I am reminding you for the fourth time, you only have a certain amount of time on the trial. I don’t want you to come in here and say, I didn’t have the opportunity to present something.” Nongkran continued to examine Michael until 3:45 p.m., when the court informed her she had utilized all of her time.

During her closing statement, Nongkran asked the court to increase the temporary spousal support award, stating: “I felt my spousal support—I didn’t agree to the \$750 a month. That was very low . . . and I am asking the Court to take a look at that. Everyone has agreed to the amount, \$750. . . . I just took whatever I could at the time.”

Regarding the Temecula home, Nongkran argued that the only reason she had added her name to the deed was because Michael had given her permission to refinance

the house and, to do so, she had to be listed on the title. She argued that she had an interest in the house based on all of the improvements she had made to it while Michael was on deployment.

Nongkran also argued that Michael still possessed some of her separate property. She stated, “My ring, valued at \$21,000, was there in the home. All my excessive jewelry and my brand-name shoes and purses. I feel that there is at least \$147,000 worth of things that had accumulated that I have from my previous marriage. I was formerly married to a Federal agent, making \$140,000 a year. I was making \$4,000 a month. We bought very nice, brand-name custom furniture[.]”

E. *The Court’s Ruling*

The court denied Nongkran’s request to modify temporary spousal support because it “[found] no additional evidence or [Family Code Section] 4320 factors.” The court also denied Michael’s request for reimbursement from Nongkran for misappropriation of funds. The court found that the Temecula house was Michael’s separate property, and it ordered the appointment of an elisor to effectuate transferring title back to Michael.

The court found that Nongkran failed to prove Michael was “in possession of anything that would be deemed [her] separate property.” Regarding the furniture that Nongkran claimed was her separate property, the court stated: “With respect to characterization or reimbursement for furniture, the Court is going to find the burden was

not met to demonstrate, evidentiary-wise, the existence or characterization of that property, and that request for reimbursement is respectfully denied.”[RT 256} The court ruled that Nongkran’s wedding ring was her separate property, but it found there was “insufficient evidence at this point to prove the whereabouts of that item.”⁸

II

DISCUSSION

A. *The Court’s Refusal to Grant a Continuance Was Proper*

Nongkran contends the trial court abused its discretion in refusing her oral request for a continuance on the last day of trial. We find no error in the court’s ruling.

“Trial continuances are disfavored and may be granted only on an affirmative showing of good cause.” (*Thurman v. Bayshore Transit Management, Inc.* (2012) 203 Cal.App.4th 1112, 1127, citing Cal. Rules of Court, rule 3.1332(c).) “Reviewing courts must uphold a trial court’s choice not to grant a continuance unless the court has abused its discretion in so doing.” (*In re Marriage of Falcone & Fyke* (2008) 164 Cal.App.4th 814, 823 (*Falcone*).)

Here, Nongkran did not demonstrate good cause for a continuance. The last day of trial, June 20, 2014, had been pending for over eight months. Nongkran was aware at

⁸ Additionally, because Nongkran had represented herself on the last day of trial, the court found good cause for not imposing evidentiary sanctions on her for failing to pay court trial fees or to request a waiver.

least as of April 8, 2014 (when her attorney filed a motion to be relieved as counsel) that she might not have an attorney for the last day of trial. According to Nongkran, she hired Mr. Rivas four days before trial. At that point, she should have filed a substitution of attorney and a written request for a continuance so that the other side would have notice. Nongkran's failure to request a continuance sooner is unreasonable, especially because she had filed at least five substitutions of attorney over the course of the proceedings.

Moreover, this was not the first time Nongkran requested a continuance. The court had granted three of her previous requests. Each time the court granted her request, it expressed hesitancy to do so, as well as concern that the matter was progressing too slowly. When Nongkran's counsel sought to withdraw his representation at the continued hearing on December 17, 2012, the court informed her that she would have to represent herself if her attorney withdrew because it was not going to grant another continuance. Thus, Nongkran was on notice she would be required to proceed in propria persona if her attorney was unable to represent her, and she cannot now argue she was disadvantaged or surprised by the court's refusal to grant the continuance on the last day of trial.

We disagree with Nongkran's contention that her case is analogous to *Vann v. Shilleh* (1975) 54 Cal.App.3d 192. In *Vann*, the defendant's attorney withdrew his representation the weekend before trial because his client refused to accept the settlement agreement he had negotiated with the plaintiff's attorney. (*Id.* at pp. 194-195.) When

trial began the following Monday morning, the defendant sought a continuance in order to obtain new counsel. The trial court denied the request and the appellate court reversed, finding that the attorney's last-minute withdrawal was unethical and the defendant had no time to procure new counsel over the weekend. (*Id.* at p. 197.) In contrast, here, Nongkran had over two months to find a new attorney upon learning in April 2014 that Mr. Starks intended to withdraw his representation. Moreover, she failed to explain why she did not exercise reasonable diligence and file a request for continuance as soon as she hired Mr. Rivas.

We find this case analogous to *Falcone, supra*, 164 Cal.App.4th 814. In that case, the former wife made an oral request for continuance on the day of the contempt hearing. The appellate court affirmed the trial court's denial of the request, concluding that a continuance would be unfair to the former husband because he had no notice. The court held that the former wife could not demonstrate good cause because her contempt motion had been pending for over seven months and, although she had known for over a month she might not have an attorney at the contempt hearing, she waited until the morning of the hearing to request the continuance. (*Id.* at p. 823.) Similarly here, Nongkran had ample time after she learned Mr. Starks would no longer be representing her to file a request for a continuance. At the very least, she should have requested a continuance immediately after hiring Mr. Rivas.

Nongkran contends there was good cause for a continuance because: (1) her attorney's surprise unavailability put her at an unfair disadvantage; (2) she could not represent herself because she was on medication; and (3) she did not have her case file. We find none of these arguments persuasive.

The record indicates that Nongkran may have known Mr. Rivas was in another trial when she hired him, four days before trial. Nongkran told the court, "I finally got the funds, meet with this attorney. I met with him. He was in trial." Regardless of whether Nongkran knew Mr. Rivas was in trial when she hired him, rather than waiting for the day of trial to arrive, she could have asked Mr. Rivas upon hiring him if he was available on June 20, 2014. This would have given her four additional days to inform the court and the other side of her situation. Most importantly, however, Nongkran could not have been surprised that she had to represent herself at trial because the court had already warned her that would be the outcome if she did not have an attorney present.

As to the medication issue, the court dispelled any concerns that Nongkran was impaired by finding she had been representing herself aptly and articulately. Moreover, the concern she raised regarding her medication was not that she was unable to adequately represent herself, but rather that she might be frustrating the court by repeating herself. The court's response to this concern was that Nongkran was performing better than most attorneys. Based on our review of Nongkran's performance on the last day of trial, we find no indication that she was impaired.

Regarding the case file Nongkran was unable to retrieve from San Diego, she has made no showing as to what additional evidence she planned to present. Indeed, she had over two years to submit evidence regarding the description and value of her separate property. At trial, she thoroughly questioned Michael regarding the items he took with him to Pennsylvania and the items that were listed on her 14-page inventory. It is unclear what additional evidence Nongkran hoped to present to the court.

Finally, Nongkran contends she suffered prejudicial harm because the court “refus[ed] to hear line-item testimony from her . . . concerning the misappropriation.” The court did no such thing, and the decision whether to present testimony (line-item or otherwise) regarding her separate property was entirely within Nongkran’s control. On the last day of trial, Nongkran announced her intention to testify about her separate property, and the trial court advised her that she could dispute Michael’s testimony by presenting her own testimony. Despite being warned at numerous points that her trial time was drawing to a close, Nongkran decided to continue examining Michael at the expense of testifying. Nongkran cannot obtain a new trial simply because, in hindsight, she is unhappy with her trial strategy.

We cannot conclude on this record that Nongkran was surprised or disadvantaged by the court’s refusal to grant a continuance. Nongkran was warned on multiple occasions that the court would not be granting additional continuances and, later, that she was running out of time to testify.

B. *Substantial Evidence Supports the Court's Separate Property Finding*

Nongkran challenges the sufficiency of the evidence supporting the court's finding that she had not proven Michael was in possession of her separate property. We uphold that finding.

"Factual findings are upheld if supported by substantial evidence." (*In re Marriage of Quay* (1993) 18 Cal.App.4th 961, 966.) "Moreover, where there was conflicting evidence below 'that which favors the judgment must be accepted as true, and that which is unfavorable must be discarded as not having had sufficient verity for acceptance by the trial court.' " (*In re Marriage of Dick* (1993) 15 Cal.App.4th 144, 156.)

There is substantial evidence in the record that Michael had not retained any of Nongkran's separate property. Michael testified that on the day Nongkran moved out of the Temecula residence, she spent about two and a half hours gathering her personal property. Further, Michael's testimony established that whatever Nongkran had not been able to retrieve from the Temecula residence herself, he had returned, another party had retrieved on a later date, or he had placed into the storage unit.

In her opening brief, Nongkran claims Michael admitted at trial that he kept a significant amount of her separate property. We disagree with this characterization of his testimony. Throughout the trial, Michael consistently maintained that he had not kept any of her separate property. He admitted he kept "dishes, bedroom sets, pots and pans"

valued at about \$3,000, but he explained that he did not view these items as Nongkran's separate property because they were among the items Nongkran had brought into Michael's house before they were married—items Nongkran had told Michael were “now ours.”

Nongkran makes much of the 14-page inventory of her separate property. The court informed Nongkran at trial that if she wanted to prove Michael had held on to any of her separate property furniture, she would have to prove each item's value and “prove there is appropriation of any particular item.” Despite this statement from the court, Nongkran did not testify at trial or present evidence of appropriation. Because Nongkran failed to present evidence of appropriation of specific items, the trial court could reasonably believe that Michael was telling the truth when he testified that he had not retained any of Nongkran's separate property. The court could also reasonably believe Michael was telling the truth when he testified that Nongkran told him the furniture that she had brought into his house before their marriage was “now ours.” Because Michael testified that he allowed Nongkran to replace some his furnishings with her furnishings and that Nongkran had told him the furnishings were “now ours,” the court could reasonably conclude that the couple had agreed to change the status of the property from separate to community. (See, e.g., *Mears v. Mears* (1960) 180 Cal.App.2d 484, 499, citing *In re Estate of Furtsch* (1941) 43 Cal.App.2d 1, disapproved of on other grounds by

See v. See (1966) 64 Cal.2d 778 [A husband and wife may by express or implied agreement change the status of their property from separate to community].)

“ “[I]t is the exclusive province of the trial judge . . . to determine the credibility of a witness and the truth or falsity of the facts on which that determination depends” ’ ” and a reviewing court will not disturb credibility determinations on appeal. (*People v. Hovarter* (2008) 44 Cal.4th 983, 996.) Thus, we conclude the court’s finding that Nongkran failed to prove Michael had retained any of her separate property and, more specifically, that Nongkran had failed “to demonstrate, evidentiary-wise” that Michael retained furniture that was her separate property is supported by substantial evidence.⁹

⁹ For the first time at oral argument, mother argued that in order for her furniture to be community property, she had to “transmute” the property pursuant to Family Code 852, which provides that “[a] transmutation of real or personal property is not valid unless made in writing by an express declaration that is made, joined in, consented to, or accepted by the spouse whose interest in the property is adversely affected.” (Fam. Code, § 852, subd. (a).) It is “improper to raise issues for the first time in a reply brief or at oral argument.” (*People v. Dixon* (2007) 153 Cal.App.4th 985, 996 citing *Sunseri v. Camperos Del Valle Stables, Inc.* (1986) 185 Cal.App.3d 559, 562, fn. 4.) In any event, the trial court considered the characterization of the furniture and found that Nongkran had failed to meet her evidentiary burden of demonstrating that *any particular items of furniture* had been appropriated. Moreover, as discussed, the court could reasonably conclude based on Michael’s testimony that the couple had agreed to change the status of the furniture Nongkran brought into Michael’s house from separate to community property. (*In re Estate of Furtsch, supra*, 43 Cal.App.2d at p. 5.)

C. *The Court's Refusal to Increase the Amount of Temporary Spousal Support Was Proper*

Nongkran contends the trial court's denial of her request to modify the temporary spousal support award was error. We disagree.

“A spousal support order is modifiable only upon a material change of circumstances since the last order. ‘Change of circumstances’ means a reduction or increase in the supporting spouse’s ability to pay and/or an increase or decrease in the supported spouse’s needs.” (*In re Marriage of West* (2007) 152 Cal.App.4th 240, 246.)

Nongkran presented no evidence that she experienced a change in circumstances since the parties stipulated to the amount of \$750 a month. Her reason for requesting modification was that the amount was “very low” and she had only agreed to \$750 because it was the most she thought she could get “at the time.” In her trial brief, Nongkran argued that she agreed on the amount “out of fear and on account of threats by her attorney to terminate representation.” However, Nongkran presented no evidence to support this argument. Because she failed to show that her circumstances had changed since the parties entered into the stipulation regarding temporary support, Nongkran was not entitled to a modification.

D. *The Marital Residence*

Nongkran argues she is entitled to one-half of the community interest in the Temecula residence based on the value of the mortgage payments made during the marriage. Nongkran acknowledges that she did not present evidence regarding the mortgage payments at trial. She contends she is entitled to a retrial on the characterization of the Temecula residence because her failure to present evidence was a result of having to unexpectedly represent herself on the last day of trial. This argument is without merit.

“ ‘Surprise’ as a ground for a new trial denotes some condition or a situation in which a party to an action is unexpectedly placed to his detriment. The condition or situation must have been such that ordinary prudence on the part of the person claiming surprise could not have guarded against and prevented it. Such party must not have been negligent in the circumstances.” (*Hata v. Los Angeles County Harbor/UCLA Medical Center* (1995) 31 Cal.App.4th 1791, 1806.) As discussed above, the trial court’s refusal to grant a trial continuance on the last day of trial was reasonable, and avoiding imposed self-representation was within Nongkran’s control. Nongkran failed to exercise reasonable diligence and request a continuance as soon as Mr. Starks informed her of his intent to withdraw representation or, at the very latest, as soon as she hired Mr. Rivas. The court had already warned her that she would have to represent herself if she came to court without an attorney.

III

DISPOSITION

The judgment is affirmed. Appellant shall bear all costs on appeal.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

CODRINGTON
J.

We concur:

RAMIREZ
P. J.

MILLER
J.